

Assembly Bill No. 468

Passed the Assembly August 31, 2002

Chief Clerk of the Assembly

Passed the Senate August 31, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 14666.6 of, and to add Sections 14666.8 and 14666.9 to, the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 468, Firebaugh. State property: access: telecommunications.

(1) Existing law requires the Director of General Services, with the approval of the state agency concerned, and the Director of Transportation to negotiate, in the name of the state, access to state-owned property, including highway rights-of-way, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the interest of the state. Existing law provides that this requirement to negotiate access applies to telecommunications and information technologies. Existing law requires, to the extent permitted under existing law, the director to determine the amount of consideration for, and means of access, which means shall include, but not be limited to, lease, permit, or other form of providing a monetary or service consideration for the access.

This bill would, in the case of the Director of Transportation, require that monetary consideration to be fair market value.

This bill would require the Director of General Services to upon payment of any applicable fee, provide a requesting party with a copy of the State Property Inventory. It would authorize the director to enter into an agreement for the lease of certain state-owned real property to any provider of wireless telecommunications services for location of its facilities, and would require that this lease, among other things, (1) provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible, and (2) facilitate, to the greatest extent possible, agreements among providers of wireless telecommunications services for colocation of their facilities on state-owned real property.

The bill would require that 15% of the revenues from fees collected pursuant to these provisions, except for revenues from



fees from a lease agreement for access to Department of Transportation property or a lease agreement existing prior to January 1, 2003, be deposited in the Digital Divide Account and available, upon appropriation by the Legislature, to be administered by the Public Utilities Commission to finance Digital Divide projects through the Digital Divide Grant Program established by this bill. The bill would require the commission to report to the Legislature and Governor annually on the effectiveness of the program.

The bill would prescribe procedures that require a provider of wireless telecommunications services, prior to placing facilities on land or facilities owned or controlled by the Department of Transportation, to notify the city or county and request from the city or county a determination of the need for a zoning review of the proposed facility. By requiring the city or county to respond to this request, the bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Wireless telecommunications service is a critical part of California's infrastructure.

(b) The rapid deployment of wireless telecommunications facilities is critical to ensure network access and quality of service.

(c) It is in the public interest to minimize the aesthetic impact of wireless telecommunications towers and facilities necessary to support wireless networks.



(d) Use of property owned by the state, local government agencies, and other public entities for location of wireless telecommunications facilities will expedite deployment of wireless telecommunications service and minimize the aesthetic impact of wireless telecommunications towers and facilities.

(e) A certain percentage of people have the best information technology that our society has to offer. These people have the most powerful computers, the best telephone and fastest Internet services, as well as a wealth of content and training relevant to their lives. There is another group of people that have very little technology or service, if any at all. The difference between these two groups is what has been called the “Digital Divide.”

(f) “Falling Through the Net: Toward Digital Divide Inclusion,” a report published by the United States Department of Commerce, determined that although more than one-half of all households have computers and more than one-half of all Americans were expected to be using the Internet by the middle of 2001, a Digital Divide remains or has expanded slightly in some cases.

(g) Today, a large number of Americans are using the Internet to conduct daily activities, including, but not limited to, communication, shopping, entertainment, job searches, job training, and educational enhancement. To be on the less fortunate side of the Digital Divide means that individuals are not able to participate in the world’s new information-based economy. Even worse is that with the growth of the information-based economy, people who lack access to those tools are becoming disadvantaged.

(h) Even with access to computers and the Internet, a divide is emerging with relevant content and information available on the Internet, as reported in The Children’s Partnership’s “Online Content for Low-Income and Underserved Americans: The Digital Divide’s New Frontier.” This report audited the content available on the Internet and found that little content could be found that addresses the interests and needs of local information users, including needs of adults with limited literacy, that is provided in a culturally relevant manner, or that is available in a variety of languages.

(i) Raising the level of digital access by increasing the number of Californians using the technology tools of the digital age is a high priority in the State of California.



(j) Community technology programs serve Californians who do and do not have computers and the Internet at home by providing open access to, and opportunities for, training in technology.

(k) Community technology programs that are trusted and familiar places in neighborhoods are capable of attracting people who would not otherwise have the opportunity to learn about and use technology.

(l) According to the United States Department of Labor, Bureau of Labor Statistics, employment in multimedia occupations is projected to grow the fastest and increase more, by 5.3 million workers, than any other major group over the 1998–2008 period.

(m) Community technology programs prepare Californians for the digital age and the ensuing economic opportunities that fuel California’s economy and make it the leader in technology.

SEC. 2. Section 14666.6 of the Government Code is amended to read:

14666.6. (a) With the approval of the state agency concerned, the director shall negotiate in the name of the state, access to state-owned property, not used for highway purposes, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the best interest of the state. To the extent permitted under existing law, the director shall determine the amount of consideration for, and means of access, which means shall include, but not be limited to, any of the following: lease, permit, or other form of providing a monetary or service consideration for the access.

(b) The Director of Transportation shall negotiate in the name of the state, access to state-owned highway rights-of-way, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the Director of Transportation to be in the best interest of the state. To the extent permitted under existing law, the Director of Transportation shall determine the amount of consideration for, and means of access, which means shall include, but not be limited to, any of the following: lease, permit, or other form of providing a fair market value monetary or service consideration for the access.



(c) This section applies to various telecommunications and information technologies, including, but not limited to, voice, data, video, and fiber-optic technologies.

(d) Any payments received under this section for a grant or conveyance through land or facilities controlled by the Department of Transportation, including but not limited to, rights-of-way along the state highway system, shall be deposited in the State Transportation Fund.

SEC. 3. Section 14666.8 is added to the Government Code, to read:

14666.8. (a) The director shall, upon payment of any applicable fee, provide a requesting party a copy of the State Property Inventory.

(b) On behalf of the state, the director may negotiate and enter into an agreement to lease department-managed, state-owned real property to any provider of wireless telecommunications services for location of its facilities. A lease for this purpose shall do all of the following:

(1) Provide for a fair market value rental fee to be paid to the state to the extent permitted under existing law.

(2) Designate a lease term that is acceptable to the director. The duration of the initial lease term for any such facility shall not exceed 10 years, and may provide for a negotiated number of renewal terms that do not exceed five years each.

(3) Provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible.

(4) Facilitate, to the greatest extent possible, agreements among providers of wireless telecommunications services for colocation of their facilities on state-owned real property.

(c) (1) Of the revenues from fees collected pursuant to this section after January 1, 2003, except for revenues from fees from a lease agreement for access to Department of Transportation property or a lease agreement existing prior to January 1, 2003, 15 percent shall be available, upon appropriation by the Legislature, for the purpose of addressing the state's Digital Divide. These revenues shall be deposited in the Digital Divide Account, which is hereby created in the California Teleconnect Fund Administrative Committee Fund established pursuant to Section



270 of the Public Utilities Code, to be used only for Digital Divide pilot projects.

(2) The Public Utilities Commission may use not more than 5 percent of the amounts deposited in the account to pay the costs of administering this subdivision.

(3) The Digital Divide Grant Program is hereby established subject to the availability of funding pursuant to this subdivision.

(4) The commission shall provide grants pursuant to this subdivision on a competitive basis subject to criteria to be established by the Public Utilities Commission and in a way that disburses the funds widely, including urban and rural areas. Grants shall be awarded to community-based nonprofit organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code for the purpose of funding community technology programs.

(5) “Community technology programs” means a program that is engaged in diffusing technology in local communities and training local communities in the use of technology, especially local communities that otherwise would have no access or limited access to the Internet and other technologies.

(6) “Digital Divide projects” means community technology programs involved in activities that include, but are not limited to, the following:

(A) Providing open access to and opportunities for training in technology.

(B) Developing content relevant to the interests and wants of the local community.

(C) Preparing youth for opportunities in the new economy through multimedia training and skills.

(D) Harnessing technology for e-government services.

(7) Recipients of grants pursuant to this subdivision shall report to the commission annually on the effectiveness of the grant program.

(8) The commission shall report to the Legislature and the Governor annually on the effectiveness of the program administered pursuant to this section.

(d) Nothing in this section shall be construed to alter any existing rights of telephone corporations under Section 7901 of the Public Utilities Code.



SEC. 4. Section 14666.9 is added to the Government Code, to read:

14666.9. (a) The placement of wireless telecommunications facilities by providers of wireless telecommunications services on structures that are owned or controlled by the Department of General Services or the Department of Transportation may be completed without city, county, or city and county land use approval where the facility (1) will be attached to an existing state building or structure, (2) does not exceed the height or significantly increase the mass of the existing building or structure, and (3) incorporates reasonable design standards and stealth technology to reduce the visibility of the facility.

(b) Prior to placing those wireless telecommunications facilities on land or facilities owned or controlled by the Department of General Services or the Department of Transportation, the provider shall notify the city or city and county within which the land or facility is located. If the land or facility is not located in a city or city and county, the provider shall notify the county within which the land or facility is located. The notice shall be delivered by registered or certified mail or by other personal delivery service that requires the recipient to sign upon delivery. A copy of the notice and the receipt for delivery to the applicable local agency shall be delivered by the provider to the director of the department that owns or controls the land or facility where the proposed facility would be located. The notice shall include the following information:

(1) The following statement in at least 14-point bold type at the top of the first page: **“REQUEST FOR DETERMINATION OF NEED FOR ZONING REVIEW OF WIRELESS TELECOMMUNICATIONS FACILITY ON STATE PROPERTY.”**

(2) A statement that the wireless telecommunications service provider is requesting a determination of whether the local agency will seek any type of zoning approval of a proposed wireless telecommunication facility on state property, and that failure to respond will result in placement of the wireless telecommunications facility without further local agency review.

(3) A copy of any structural, engineering, architectural, or design plans for the telecommunications facility submitted by the provider and approved by the state.



(4) A description of the proposed wireless telecommunications facility, including a photomontage of the proposed facility, the manufacturer's data sheet for any antennae, and a description of the materials to be used and any antenna support structures.

(5) A description of the location of the proposed facility, including, but not limited to, the street address, if any, in a form that would allow a layperson to easily understand the location.

(c) The city, county, or city and county shall notify the provider no later than 60 days after receipt of the notice described in subdivision (b) whether the proposed facility meets the criteria of subdivision (a) and may be completed without city, county, or city and county land use approval. If the facility does not meet those criteria:

(1) The notice shall identify which elements of the design prevent the proposed facility from proceeding absent local agency approval and shall include a marked copy of the architectural plans submitted by the wireless telecommunications provider illustrating the disqualifying feature of the facility design. However, the absence of this information shall not affect the sufficiency of the notice.

(2) The city, county, or city and county shall have the right to request of the director of the department that owns or controls the land or facility where the proposed facility would be located that the provider submit an application with that local agency for approval of the proposed facility in accordance with applicable local, state, and federal law as though the proposed wireless telecommunications facility were subject to local agency review.

If the city, county, or city and county decides that the proposal does meet the criteria specified in subdivision (a), the wireless telecommunications provider may proceed with placement of the facility without further local agency approval. If the city, county, or city and county does not notify the provider of wireless telecommunications services of its decision regarding whether the proposal meets the foregoing criteria within the required 60-day period, the provider may proceed with placement of the facility without further local agency approval only if the facility is installed in substantial compliance with the information provided to the city, county, or city and county in the initial submittal notice required of the wireless telecommunications provider.



(d) (1) If the local agency timely affirms that it does not require zoning review of the proposed facility within 45 days of the initial notice required under subdivision (c), the wireless telecommunications services provider shall pay the local agency the equivalent of four months of rental payments made by the provider to the state for use of the site as an in-lieu rental payment.

(2) If the local agency timely affirms that it does not require zoning review of the proposed facility within 60 days of the initial notice required under subdivision (c), the wireless telecommunications services provider shall pay the local agency the equivalent of two months of rental payments made by the provider to the state for use of the site as an in-lieu rental payment.

(e) Except as specifically provided in subdivision (a), nothing in this section shall be construed to expand or contract local zoning authority over state property under existing law.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.



Approved _____, 2002

Governor

